

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROMEO COSCIA

Plaintiff,

v.

SALVATORE CAPONE

Defendant.

CIVIL ACTION

NO. 02-3655 (JRP)

ORDER

AND NOW, this _____ day of _____ 2002, upon consideration of Defendant's Motion to Dismiss Plaintiff's Amended Complaint and Plaintiff's Response thereto, it is hereby ORDERED that Defendant's Motion is DENIED. Defendant shall file an answer to the Amended Complaint within ten (10) days.

BY THE COURT:

JOHN R. PADOVA, U.S.D.J.

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**PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO DISMISS AMENDED COMPLAINT**

For the reasons set forth in the attached Memorandum of Law, which is hereby incorporated by reference, Plaintiff, Romeo Coscia, through counsel, respectfully requests that this Court deny Defendant's Motion to Dismiss Amended Complaint.

Respectfully submitted,

EIZEN FINEBURG & McCARTHY, P.C.

Date: July 14, 2002

By: 

GARY J. McCARTHY, ESQUIRE

JOHN N. SALLA, ESQUIRE

JOSEPH M. ARMSTRONG, ESQUIRE

Attorneys for Plaintiff, Romeo Coscia

Two Commerce Square
2001 Market Street, Suite 3410
Philadelphia, PA 19103
Tel: (215) 751-9666 Fax: (215) 751-9310

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**PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS AMENDED COMPLAINT**

This Court should deny Defendant's Motion to Dismiss because Plaintiff's Amended Complaint is, in accordance with Fed.R.Civ.P. 84, taken directly from the official Appendix of Forms, Form 6 – Complaint for Money Lent, and in fact, substantially exceeds the minimum specificity requirements provided for by that rule and form.

I. Procedural History

Plaintiff, Romeo Coscia ("Mr. Coscia"), commenced this action against Salvatore Capone ("Mr. Capone") by filing a Complaint on June 7, 2002. On June 13, 2002, Mr. Coscia filed an Amended Complaint as a matter of right. Mr. Capone filed a timely Motion to Dismiss pursuant to Fed.R.Civ.P. 12 on June 28, 2002.

II. Argument

The official forms of Federal Rules of Civil Procedure cannot be challenged under the Rules. See Guidry v. United States Tobacco Co., Inc., 188 F.3d 619 (5th Cir. 1999). Rule 84 provides in its entirety that:

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Official form 6 is the form of complaint for money lent that cannot be challenged. Form 6 is set forth below in its entirety:

FORM 6

COMPLAINT FOR MONEY LENT

1. Allegation of jurisdiction.
2. Defendant owes plaintiff _____ dollars for money lent by plaintiff to defendant on June 1, 1936.

Wherefore (etc. as in Form 3)

Mr. Coscia's Amended Complaint, a copy of which is attached as Exhibit A, contains detailed allegations of jurisdiction and venue, the amount loaned to Mr. Capone, when the money was lent and where the money was delivered. The Complaint is simple, brief and easily answered by Mr. Capone, just as the Rules intend. See Guidry, 188 F.3d at 632, citing 12 Wright & Miller, § 3161, at 548 ("Most of the forms are exceedingly short and general in their allegations. They deserve careful study for they indicate much better than do the bare words of the rules the revolution in procedure that the rules were intended to accomplish. . . . Pleadings similar to the Official Forms inform the adversary of the claim or defense asserted with sufficient particularity to enable it to prepare a responsive pleading and the discovery and pretrial rules amply protect the parties from surprise.").

As intended by the Rules, Mr. Coscia's Amended Complaint informs Mr. Capone of the claim asserted with sufficient particularity that Mr. Capone can prepare a responsive pleading.

III. Conclusion

For the foregoing reasons, Mr. Coscia respectfully requests that this Court deny Mr. Capone's Motion to Dismiss and enter the attached proposed Order.

Respectfully submitted,

EIZEN FINEBURG & McCARTHY, P.C.

Date: July 14, 2002

By: 

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CERTIFICATE OF SERVICE

I, Joseph M. Armstrong, Esquire, hereby certify that on the date set forth below, I served on all interest counsel via First Class Mail a true and correct copy of the foregoing Response to Defendant's Motion to Dismiss Amended Complaint.

Date: July 14, 2002


JOSEPH M. ARMSTRONG, ESQUIRE